

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ARVIN COLLINS

Plaintiff,

-against-

**9:08-CV-470
(TJM/DEP)**

**DALE ARTUS, Superintendent,
Clinton Correctional Facility, et al.,**

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). In a Report and Recommendation dated October 31, 2008, Magistrate Judge Peebles recommended that Defendants' motions for dismissal be granted and that Plaintiff's complaint be dismissed with leave to replead. Plaintiff has filed objections to the recommendation.

II. STANDARD OF REVIEW

When objections to a magistrate judge's Report and Recommendation are lodged, the Court makes a "*de novo*" determination of those portions of the report or specified

proposed findings or recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1)(C). After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.”

Id.

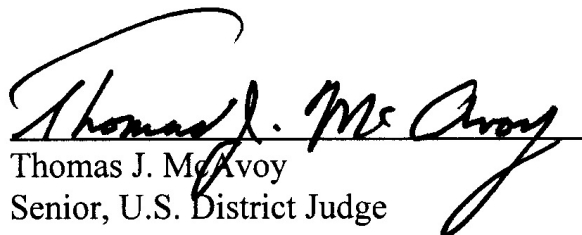
III. DISCUSSION

Having reviewed the record *de novo* and having considered the issues raised in the objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Peebles for the reasons stated in the October 31, 2008 Report-Recommendation and Order. Therefore, it is hereby

ORDERED that Defendants’ motions for dismissal [dkt. # 13 & # 26] are **GRANTED** and the action is **DISMISSED in its entirety** with leave to replead. Plaintiff’s pending motion for appointment of counsel [dkt. # 32] is **DENIED AS MOOT**.

IT IS SO ORDERED.

DATED: March 9, 2009


Thomas J. McAvoy
Senior, U.S. District Judge